



RECEIVED

DEC 02 2002

TECH CENTER 1600/2900

REMARKS

*Restriction Requirement*

In the Office action dated July 3, 2002, the Examiner restricted the above-identified patent application and required election of one of the following groups of claims for prosecution under 35 U.S.C. § 121:

- I. Claims 1-17, drawn to a method of detecting phosphate group activity on a substrate using luminescence polarization measurement of a luminescent peptide, wherein the peptide includes the sequence EKR<sub>P</sub>pSR<sub>P</sub>SYL (SEQ ID NO: 8)  
KRREILSRRP<sub>P</sub>SYRK (SEQ ID NO: 9)  
KHFPQFpSYSAS (SEQ ID NO: 10)  
pSPELERLIIQC (SEQ ID NO: 11)  
GSPSVRCSpSM<sub>P</sub>S (SEQ ID NO: 12)  
RSRHSpSYPAGT (SEQ ID NO: 13)  
LpTPLK (SEQ ID NO: 14)  
FpTPLQ (SEQ ID NO: 15)  
RKR<sub>P</sub>TLRRL (SEQ ID NO: 16)  
LRRApSLG (SEQ ID NO: 17)  
KKLNRTLpSVASL (SEQ ID NO: 18)  
RPRAApTF-NH<sub>2</sub> (SEQ ID NO: 19)  
LRRApSLG-NH<sub>2</sub> (SEQ ID NO: 20)  
EKR<sub>P</sub>pSRSKYL (SEQ ID NO: 29) or  
EKRPSQR<sub>P</sub>SYL (SEQ ID NO: 30).
- II. Claims 18-29, drawn to a method of detecting phosphate group activity on a substrate using fluorescence resonance energy transfer measurements.
- III. Claims 30-33, drawn to substrate compositions that include one of the following peptides:  
AYTGLSTRNQETYATH-NH<sub>2</sub> (SEQ ID NO: 31)  
YYYIE-NH<sub>2</sub> (SEQ ID NO: 32)  
GYNELNLGRREEYDVL-NH<sub>2</sub> (SEQ ID NO: 33)  
EKRPSRSKY<sub>L</sub> (SEQ ID NO: 34)  
EKRPSQRSY<sub>L</sub> (SEQ ID NO: 35)  
EKRPSRSY<sub>L</sub> (SEQ ID NO: 36)  
KRREILSRRPSYRK (SEQ ID NO: 37)  
KHFPQFSYSAS (SEQ ID NO: 38)

SPELERLIIQC (SEQ ID NO: 39)  
GSPSVRCSSMS (SEQ ID NO: 40)  
RSRHSSYPAGT (SEQ ID NO: 41)  
LTPLK (SEQ ID NO: 42)  
FTPLQ (SEQ ID NO: 43)  
RKRTLRL (SEQ ID NO: 44)  
LRRASLG (SEQ ID NO: 45)  
KKLNRTLSVDSL (SEQ ID NO: 46)  
RPRAATF-NH<sub>2</sub> (SEQ ID NO: 47) or  
LRRASLG-NH<sub>2</sub> (SEQ ID NO: 48).

IV. Claims 34-35, drawn to peptide compositions comprising  
EKRPpSRSKYL (SEQ ID NO: 29)  
EKRPSQRpSYL (SEQ ID NO: 30)  
EKRPpSRpSYL (SEQ ID NO: 8)  
KRREILSRRPpSYRK (SEQ ID NO: 9)  
KHFPQFpSYSAS (SEQ ID NO: 10)  
pSPELERLIIQC (SEQ ID NO: 11)  
GSPSVRCSpSMpS (SEQ ID NO: 12)  
RSRHSpSYPAGT (SEQ ID NO: 13)  
LpTPLK (SEQ ID NO: 14)  
FpTPLQ (SEQ ID NO: 15)  
RKRpTLRRL (SEQ ID NO: 16)  
LRRApSLG (SEQ ID NO: 17)  
KKLNRTLpSVDSL (SEQ ID NO: 18)  
RPRAApTF-NH<sub>2</sub> (SEQ ID NO: 19) or  
LRRApSLG-NH<sub>2</sub> (SEQ ID NO: 20).

V. Claims 36-39, drawn to compositions that bind peptides having the sequence  
EKRPpSRpSYL (SEQ ID NO: 8)  
KRREILSRRPpSYRK (SEQ ID NO: 9)  
KHFPQFpSYSAS (SEQ ID NO: 10)  
pSPELERLIIQC (SEQ ID NO: 11)  
GSPSVRCSpSMpS (SEQ ID NO: 12)  
RSRHSpSYPAGT (SEQ ID NO: 13)  
LpTPLK (SEQ ID NO: 14)  
FpTPLQ (SEQ ID NO: 15)  
RKRpTLRRL (SEQ ID NO: 16)  
LRRApSLG (SEQ ID NO: 17)  
KKLNRTLpSVDSL (SEQ ID NO: 18)  
RPRAApTF-NH<sub>2</sub> (SEQ ID NO: 19)  
LRRApSLG-NH<sub>2</sub> (SEQ ID NO: 20)

EKRPPpSR SKYL (SEQ ID NO: 29) or  
EKRPSQRpSYL (SEQ ID NO: 30).

- VI. Claims 40-41 drawn to compounds having the formula  
FLApYTGLSTRNQETpYATH-NH<sub>2</sub> (SEQ ID NO: 21)  
FLpYpYpYIE-NH<sub>2</sub> (SEQ ID NO: 22) or  
FLGpYNELNLGRREEpYDVL-NH<sub>2</sub> (SEQ ID NO: 23).
- VII. Claims 42 and 44-46, drawn to methods of determining tyrosine kinase activity.
- VIII. Claim 43, drawn to methods of detecting a compound having kinase modulating activity.

Applicants traverse the restriction requirement, requesting reconsideration, contending that the restriction requirement is improper. The Examiner appears to assert that the methods of claim 1 are limited to those utilizing the sequences set out by the Examiner. These sequences appear to have been selected solely on the basis of their appearance in dependent claim 16. However, claim 16 does not establish the scope of claim 1, but rather limits it for the purposes of claim 16 only. Similarly, the Examiner appears to assert that the compositions of claim 36 are limited to those binding the particular sequences listed in the restriction requirement. Applicants disagree: these and other claims in this application are not limited in the manner suggested by the Examiner. Moreover, applicants have the right to claim the invention with the limitations that they select to circumscribe that invention, as well as the right to have each claim examined on the merits. By arbitrarily truncating the scope of the pending claims in formulating the restriction requirement, the Examiner is failing to examine what applicants regard as aspects of their invention.

Applicants hereby provisionally elect Group I, corresponding to claims 1-17, for prosecution, subject to this traversal and request for reconsideration, in accordance with 37 CFR 1.143. Claims 18-46 are canceled without prejudice.

***Election Requirement***

The Examiner further requires an election within Group I of a single amino acid sequence defining a patentably distinct peptide. The Examiner states that the separate proteins and/or peptides bear no structural or biochemical property in common and therefore that each particular peptide claimed would require a separate area of search.

Applicants traverse the election requirement, requesting reconsideration, for at least the following reasons. First, as described above, the Examiner reduced the scope of claim 1 in formulating the restriction requirement. For example, the method of claim 1 includes methods carried out with the peptides identified by the Examiner, as well as with other peptides. Thus, claim 1 as filed encompasses a scope greater than the sum of the methods identified by the Examiner. Second, the Examiner stated that the separate peptides have no structural or biochemical property in common. Applicants respectfully disagree. The peptides are disclosed as useful substrates in a biological assay system for determining phosphorylation or dephosphorylation. Thus, the individual peptides share a common biochemical utility.

Applicants hereby provisionally elect the method of claim 1 with respect to the peptide KKLNRTLpSVASL (SEQ ID NO: 18), subject to this traversal and request for reconsideration, in accordance with 37 CFR 1.143. However, upon allowance of generic

claim 1, applicants request the withdrawal of the restriction requirement with respect to the peptide species.

***Summary***

Applicants traverse the restriction requirement dated September 20, 2002, respectfully requesting reconsideration. Therefore, in accordance with 37 CFR 1.143, applicants provide only a provisional election of invention and species, namely Group I, peptide species KKLNRTLpSVASL (SEQ ID NO: 18). Applicants also cancel without prejudice the remaining claims in this application, subject to their right to pursue these claims in this or a subsequent divisional or continuation application. If the Examiner has any questions regarding this response, or the application more generally, the Examiner is encouraged to call the undersigned attorney at (503) 224-6655.

CERTIFICATE OF MAILING

I hereby certify that this correspondence is being deposited with the United States Postal Service as first class mail in an envelope addressed to: Commissioner for Patents, Washington, D.C. 20231 on November 20, 2002.

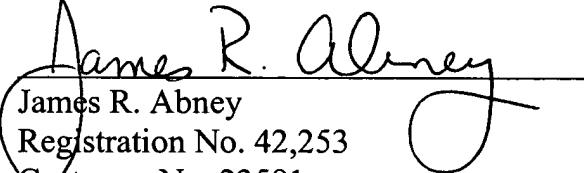


Renee Knight



Respectfully submitted,

KOLISCH HARTWELL, P.C.



James R. Abney  
Registration No. 42,253  
Customer No. 23581  
520 S.W. Yamhill Street, Suite 200  
Portland, Oregon 97204  
Telephone: (503) 224-6655  
Facsimile: (503) 295-6679  
Attorney for Assignee